

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHIGAN BRICKLAYERS AND ALLIED
CRAFTWORKERS HEALTH CARE FUND, et
al.,

Plaintiffs,

Case No. 05-CV-72104-DT

v.

CHRISTIN MASONRY, INC., et al.,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION COMPEL

Pending before the court is Plaintiffs' Motion Compel, seeking Defendants' responses to certain interrogatories and document requests. Having reviewed the motion, the court finds a hearing to be unnecessary. See E.D. Mich. LR 7.1(e)(2). The court will grant Plaintiffs' motion.

I. BACKGROUND

Plaintiffs initiated this action on May 27, 2005, seeking to collect unpaid fringe benefit contributions pursuant to 29 U.S.C. § 1132 of the Employment Retirement Income Security Act ("ERISA"). On July 26, 2005, the court entered an order granting Plaintiffs' motion for alternate service. On that same day, Defendants Christin Masonry, Inc., Kristine Wargo and Jeff Wargo were served pursuant to the directives of the court's order. Specifically, Plaintiffs served Defendants by firmly affixing a copy of the summons and complaint on the individual Defendants' place of residence and the business Defendant's current job site, and by mailing the summons, complaint and July 26 order to the individual Defendants' residence. (See 7/26/05 Order.) Defendants did

not file an answer, and Plaintiffs obtained a clerk's entry of default on August 17, 2005. On August 22, 2005, Plaintiffs filed a motion for a partial default judgment, and on August 26, 2005, Defendants filed a motion to set aside the default. The court granted a motion to set aside the clerk's entry of default and denied as moot Plaintiffs' motion for partial default judgment. The court ordered that Defendants file an answer on or before September 19, 2005.

On September 20, 2005, Plaintiffs served several discovery requests on Defendants consisting of a request for production of documents directed to both the corporate Defendant Christin Masonry and to the individual Defendants, and interrogatories directed to all Defendants. Defendants have not responded to these discovery requests with the exception of certain payroll records which, Plaintiffs state, have been adequately presented. On October 28, 2005, Plaintiffs filed the instant motion to compel discovery. Defendants have not responded.

A party who does not respond, object or seek a protective order as to discovery requests such as these may be held to have waived any objection to the requests. Fed. R. Civ. P. 34(b). Such a result, in the court's view, is particularly apt when the party fails to respond to a motion to compel.

IT IS ORDERED that Plaintiffs' motion to compel [Dkt. # 32] is **GRANTED**. Defendants are **ORDERED** to produce the documents and fully answer the interrogatories as stated in Plaintiffs' discovery request of September 20, 2005, the

responses to be delivered to the office of Plaintiffs' counsel not later than the close of business on **Monday, December 12, 2005.**

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 5, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 5, 2005, by electronic and/or ordinary mail.

S/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522